



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**PRIVATE SECURITY AS AN ESSENTIAL  
COMPONENT OF HOMELAND SECURITY**

by

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June 2004

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**PRIVATE SECURITY AS AN ESSENTIAL COMPONENT OF HOMELAND  
SECURITY**

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## ABSTRACT

This thesis argues that first preventers are not limited to law enforcement and/or intelligence personnel. Private security officers are our true first preventers because they control access to the myriad of facilities we enter and exit every day. They are the individuals with their boots on the ground in our efforts to recognize abnormal or unusual activity. Based on the observation by President George W. Bush in the *National Strategy for Homeland Security* that 85% of the nation's critical infrastructure is owned by private agencies and organizations, one conclusion is incontrovertible: *No one is in a better position to be a first preventer than the private security officer in America.*

In New York State, a professionally trained and licensed security officer's primary directive is defined as detecting, deterring and reporting on conditions which might harm life or property. It is incumbent upon government public security officials, *and private security executives themselves*, to cultivate and exploit this undervalued segment of our efforts to combat terrorism on a national basis. In order to do so, and to assure the public of the competency of the private security workforce, it is imperative that private security officers be mandated to meet minimum standards.

Therefore, this thesis makes the argument that advocating nationwide, state controlled licensing and training of private security officers is essential to the efforts of the Department of Homeland Security to employ 'First Responder' and 'First Preventer' strategies in the war on terrorism.

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	FIRST PREVENTERS.....	1
B.	JUSTIFICATION AND THE AUTHORIZED USE OF PHYSICAL FORCE.....	9
II.	THE STATE OF THE INDUSTRY .....	11
A.	THE CALL FOR PRIVATE SECURITY STANDARDS .....	11
1.	Nationally .....	11
2.	Internationally .....	12
B.	STATE BY STATE STANDARDS .....	17
III.	APPLICABILITY OF THE NEW YORK STATE SECURITY GUARD ACT TO HOMELAND SECURITY AND THE WAR ON TERRORISM .....	19
A.	A NEW VISION FOR PROTECTING THE PUBLIC .....	20
B.	A COOPERATIVE EFFORT.....	21
C.	THE NEW YORK STATE SECURITY GUARD ACT OF 1992 .....	22
1.	Legislative Intent.....	23
2.	The Goals and Objectives of Requiring Certification .....	24
D.	NEW YORK STATE LICENSING STATISTICS.....	26
E.	THE CASE FOR REGISTRATION.....	29
1.	Background Checks and the Relation to Information Sharing.....	31
2.	The Security Guard Act and Homeland Security Applicability- A Foundation for Information Sharing .....	32
F.	CONCLUSION: EMPOWERING THE OFFICER AT THE FRONT DOOR.....	34
IV.	RECOMMENDATIONS.....	39
A.	PERSUADE DHS THAT THIS IS A TOPIC WORTHY OF STUDY <i>À LA</i> “HALLCREST” .....	40
B.	PERSUADE DHS THAT NEW YORK IS A ‘MODEL’ TO STUDY .....	41
C.	PUBLICIZE AND ENCOURAGE THE USE OF PROTOCOLS MODELED ON THE NEW YORK CITY POLICE DEPARTMENT AREA PUBLIC PRIVATE SECURITY LIAISON (APPL) AND THE NEW YORK STATE OFFICE OF PUBLIC SECURITY (OPS) ADVISORY SYSTEMS.....	43
D.	ENCOURAGE PRIVATE SECURITY DIRECTORS TO SHARE THE ‘INTEL’ THEY RECEIVE WITH SUBORDINATES .....	43
E.	ENCOURAGE A CALL FOR STATE LEGISLATIVE ACTION MANDATING SECURITY OFFICER TRAINING RE: THE USE OF SENSITIVE INFORMATION-SPEARHEADED BY THE AMERICAN SOCIETY FOR INDUSTRIAL SECURITY (ASIS) .....	44
F.	CONCLUSION .....	44

APPENDIX A.	FAILING TO MAKE THE GRADE .....	47
APPENDIX B.	HOW THE GRADING SYSTEM WORKS.....	49
APPENDIX C.	QUESTIONNAIRE REGARDING PUBLIC PRIVATE SECURITY COOPERATION.....	51
APPENDIX D.	NEW YORK STATE SECURITY GUARD REQUIREMENTS UNDER GBL 89-N.....	53
APPENDIX E.	RECOMMENDATIONS FOR JOB TRAINING AND REFRESHER COURSES .....	55
LIST OF REFERENCES.....		57
INITIAL DISTRIBUTION LIST .....		61

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My exposure to and familiarity with the private security industry is made possible by one individual-my former Commanding Officer, retired NYPD Captain Gerald "Jerry" Strollo. He encouraged me to seek certification as a New York State Security Guard Program trainer and continues to employ my services in that capacity more than ten years later.

Many thanks to Paul Stockton of NPS for helping develop the concept of the thesis and the questionnaire. Another huge debt is owed to Maria Rasmussen of NPS for her energized efforts to mold this raw idea-from a demonstrative classroom/blackboard outline to my skeletal written outline to ultimately a document worthy of the title 'thesis.' Nancy Sharrock of NPS helped to make my efforts resemble a thesis and I thank her for her aid in this endeavor. Thank you to Greta Marlatt and all the library staff at NPS-you all are the best. Thanks to Bill Pelfrey of Virginia Commonwealth University for being my second reader, but more importantly, for drawing my attention to the research (and lack thereof) on this topic.

Finally, many thanks to the private security directors and the other respondents to the questionnaire, many former NYPD executives, and in more than one case, my NYPD mentors. They wanted to maintain anonymity and therefore their desire to remain nameless is respected. Their contributions and the assistance of all the aforementioned individuals will not be forgotten.

## EXECUTIVE SUMMARY

First Preventers. Everybody is talking about them.<sup>1</sup> But who are they? Are they just law enforcement officials with a new attitude? A search for a definition of the term suggests that first preventers are merely the ‘law enforcement or intelligence personnel who are in the most advantageous position to prevent a terrorist attack.’<sup>2</sup>

This thesis argues that first preventers are not limited to law enforcement and/or intelligence personnel. Private security officers are our true first preventers because they control access to the myriad of facilities we enter and exit every day. They are the individuals with their boots on the ground in our efforts to recognize abnormal or unusual activity. Based on the observation by President George W. Bush in the *National Strategy for Homeland Security* that 85% of the nation’s critical infrastructure is owned by private agencies and organizations, one conclusion is incontrovertible: *No one is in a better position to be a first preventer than the private security officer in America.*

In New York State, a professionally trained and licensed security officer’s primary directive is defined as detecting, deterring and reporting on conditions which might harm life or property. It is incumbent upon government, *and private security executives themselves*, to cultivate and exploit this undervalued segment of our efforts to combat terrorism on a national basis. In order to do so, and to assure the public of the competency of the private security workforce, it is imperative that private security officers be mandated to meet minimum standards.

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<sup>1</sup> See “Securing Our Homeland: Protecting Our Urban Areas,” Secretary Tom Ridge’s remarks on May 14, 2003 at [[www.dhs.gov/interweb/assetlibrary/First\\_Responder.doc](http://www.dhs.gov/interweb/assetlibrary/First_Responder.doc)]. Accessed January 2, 2004 and the examples cited in the Word Spy definition hereinafter.

<sup>2</sup> From “The Word Spy,” [[www.wordspy.com/words/firstpreventers.asp](http://www.wordspy.com/words/firstpreventers.asp)]. Accessed January 2, 2004. Copyright © 1995-2003 Paul McFedries and Logophilia Limited. See also Bernstein, Jonathon, “What is a First Preventer?” [[www.bersteincrisismanagement.com/nl/crisismgr030501.html#2](http://www.bersteincrisismanagement.com/nl/crisismgr030501.html#2)]. Accessed April 12, 2004 and [[www.californiaspaceauthority.org/news0306b.html](http://www.californiaspaceauthority.org/news0306b.html)]. Accessed April 12, 2004 attributing the coining of the phrase ‘First Preventer’ to former California Governor Gray Davis.

Therefore, this thesis makes the argument that advocating nationwide, state controlled licensing and training of private security officers is essential to the efforts of the Department of Homeland Security (DHS) to employ ‘First Responder’ and ‘First Preventer’ strategies in the war on terrorism.

Consider this statement by Secretary Ridge regarding the Urban Area Security Initiative funding announcement:

One of the most important responsibilities of the Department of Homeland Security is to enhance the capabilities of our nation's first responders and first preventers who devote themselves to preventing terrorism and responding to emergencies,...These grants demonstrate our strong commitment to provide assistance to the men and women on the front lines of the war against terrorism. The dissemination of this funding takes into account threats, population density and the presence of critical infrastructure which will best help to secure our homeland in an environment where we must ensure maximum benefit is derived from every security dollar.<sup>3</sup>

To ensure maximum benefit is derived from every security dollar we invest in the war on terrorism, we need to start with the fundamentals. Those men and women who are charged with protecting our office buildings, our sporting events, our critical infrastructure and in certain instances, our residential apartment buildings, need to know what terrorism and its perpetrators are all about. Similarly, in an effort to know who our protectors are, we need to examine the backgrounds of our security officer candidates. This can be dealt with on a basic level by requiring training and licensing of private security personnel. Several states already require this “certification and registration.” For example, this screening and training have been the law in New York State since 1994.

The thesis examines the state of private security in relation to training and licensing in Israel, Australia, Canada and England as well as the 50 states. The seminal research on the state of private security in America – the two volume Hallcrest Report,

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<sup>3</sup> Ibid. See Ridge remarks.

“Private Security and Police in America”<sup>4</sup> and “Private Security Trends, 1970-2000: The Hallcrest Report II”<sup>5</sup> will be examined. However well respected these reports are, it cannot be ignored that they are 19 and 14 years old, respectively. A current, comprehensive review of the private security field is warranted.<sup>6</sup> A DHS funded study may be the most logical starting point for analyzing the appropriate role for this vastly underutilized resource. Examining the New York State experience is warranted since there is a 10-year history with essentially unmined data. Also, as John McCrie, a professor at John Jay College of Criminal Justice in New York was quoted as saying, “Congress ought to act because the private security forces...are part of the homeland security strategy of the future.”<sup>7</sup> More importantly, private security forces need to be part of the *current* homeland security strategy, because they already perform an underappreciated role and arguably are part of the DHS strategy – just examine the specific alerts DHS sends to the private security sector.<sup>8</sup> The objective is to develop a proposed model for nationally supported, state regulation of the private security industry.

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<sup>4</sup> William Cunningham and Todd Taylor, *The Hallcrest Report: Private Security and Police in America*. (McClean, VA: Chancellor Press, 1985).

<sup>5</sup> William Cunningham, John Strauchs and Clifford Van Meter, *Private Security Trends: 1970 to 2000: The Hallcrest Report II*. (McClean, VA.: Butterworth-Heinemann, 1990).

<sup>6</sup> An explanation of the failure to pass legislation known as the “Law Enforcement and Industrial Security Cooperation Act of 1996” is needed. Further study could determine why the bill was re-introduced in 1997 as the “Private Security Officer Quality Assurance Act of 1997” and once again failed to pass. Finally, the legislative history of including this bill as a component of the “PATRIOT Act” and its failure to be included might shed light on why there are no national standards for private security officers. This is beyond the scope of this paper, but certainly warrants review by DHS if it undertakes a study as suggested herein.

<sup>7</sup> Mimi Hall, “Private Security Guards- Homeland Defense’s Weak Link,” *USA Today*, January 23, 2003, accessed via ProQuest September 27, 2003.

<sup>8</sup> Department of Homeland Security Alert at [<http://www.asisonline.org/membership/member-secure/ricin.doc>]. Accessed March 20, 2004.

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## I. INTRODUCTION

### A. FIRST PREVENTERS

Everybody talks about them.<sup>9</sup> But who are they? Are they just law enforcement officials with a new attitude? A search for a definition of the term reveals that first preventers are the ‘law enforcement or intelligence personnel who are in the most advantageous position to prevent a terrorist attack.’<sup>10</sup>

This chapter argues that American society has become increasingly reliant upon private security officers. It also submits that first preventers are not limited to law enforcement and/or intelligence personnel. Private security officers are our true first preventers because they control access to the myriad of facilities we enter and exit every day. Since they are trained in New York State to patrol and observe what is normal and usual, they are the individuals with their boots on the ground in our efforts to recognize *abnormal* or *unusual* activity. Consequently, it is the position of this thesis that *no one is in a better position to be a first preventer than the private security officer in America*.

Five weeks after the September 11, 2001 attacks, Jim Nesbitt, a writer for Newhouse News Service, penned an article entitled, *Private Security Firms Lack Standards and Oversight* and stated what is painfully obvious to those in positions of responsibility in public and private security alike:

In the aftermath of last month’s devastating terrorist attacks, the nationwide call for better tighter security has underscored the harsh reality of a private security industry that has no uniform standards and little or no government oversight...the 1.8 million people working in this industry lack uniform standards for training, education, psychological fitness, drug screening or criminal background checks.<sup>11</sup>

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<sup>9</sup> See Secretary Tom Ridge’s remarks at [[www.dhs.gov/interweb/assetlibrary/First\\_Responder.doc](http://www.dhs.gov/interweb/assetlibrary/First_Responder.doc)]. Accessed January 2, 2004 and the examples cited in the Word Spy definition hereinafter.

<sup>10</sup> From “The Word Spy” at [[www.wordspy.com/words/firstpreventers.asp](http://www.wordspy.com/words/firstpreventers.asp)]. Accessed January 2, 2004. Copyright © 1995-2003 Paul McFedries and Logophilia Limited.

<sup>11</sup> Jim Nesbitt, “Private Security Firms Lack Standards and Oversight, Experts Say,” *Newhouse News Service*, October 21, 2001, accessed via LexisNexis September 27, 2003.

So what? The security industry has been the scene of abuses ranging from “uniformed” criminals preying on those they have been hired to protect to “overzealous cop wannabes” who give the security industry and police a black-eye when they exceed their authority.<sup>12</sup> Since 1991, security guards have been arrested for arson, embezzlement, armed robbery and murder.<sup>13</sup> According to Nesbitt,

Armed or not, the guard at the front desk of an office building or a factory gate probably has only a few hours of rudimentary training and makes only a few dollars above minimum wage, experts said. ... The key to success, experts said, is training and proper screening of job candidates.<sup>14</sup>

This low-pay, poor access control refrain has been heard before. A compelling account of the United States embassy bombing in Nairobi appeared in the September 9, 1998 edition of the *New York Times*. Author James C. McKinley, Jr. discusses how easy it was for terrorists to breach the perimeter of the parking lot where the embassy was situated. “Its perimeter was patrolled by unarmed security guards earning about \$100 a month.”<sup>15</sup> McKinley’s article continues, recounting the spine-tingling fear that private security officers are forced to confront as they toe the front line in the war on terrorism:

Benson Okuku Bwaku was the guard manning the barrier at the entrance to the underground garage. He said he saw the 3.5-ton truck with a covered cargo bay turn off the avenue and speed toward him. The barrier was up, Mr. Okuku Bwaku said, because he had just allowed a three-wheel mail cart, driven by a courier named Francis Kile, to pass out of the embassy’s garage. ‘I just feel something in my blood that the van was unusual,’ Mr. Okuku Bwaku recalled. ‘I asked Kile to move his cart quickly.’ The truck would have reached the barrier in seconds had a white sedan not pulled out of another parking garage under the Cooperative Bank building across the lot from the embassy, he said. The sedan ended up nose to nose with the truck and for a minute neither could move. Mr. Okuku Bwaku said he saw a man jump from the passenger side of the truck. Feeling panicked, the guard pushed the barrier down and fastened it to the post. When he looked up, the man was next to him, two yards away, he said... ‘What he said was, “Open the gate,”’...The man hurled a

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> James C. McKinley, Jr., “Security Flaws Left Embassy in Nairobi Open to Attack,” *New York Times* accessed via LexisNexis, March 24, 2004.

grenade-like device at Mr. Okuku Bwaku's head with his left hand...Mr. Okuku Bwaku ran about 25 feet toward Haile Selassie Avenue and stopped. He said he desperately tried to radio the marine guard at Post 1, a bulletproof control room in the reception area of the embassy. 'Break! Base! Terrorism! Terrorism!' he said he shouted into the radio...Leonard Richardson, a former military policeman who is one of the partners in the guard company, said the guards receive about 80 hours of classroom training and 40 hours of practical training... 'We teach them about terrorism and the things they should look for.' But Mr. Richardson acknowledged it was virtually impossible for unarmed guards to stop armed men from driving a car filled with explosives up to the rear of the embassy, especially given the lack of physical barriers.<sup>16</sup>

Unfortunately, in January 2003, more than 15 months after the 9/11 attacks, little changed as *USA-Today* ran a story entitled *Private Security Guards-Homeland Defense's Weakest Link*. Maybe the most troubling observation by author Mimi Hall was that, "Most of the nation's 1 million-plus security guards are unlicensed, untrained and not subject to background checks."<sup>17</sup> Nesbitt and Hall are not alone in their concerns.

For instance, Nesbitt quoted Ira Lipman, then president of Guardsmark, the nation's fourth largest security company. Lipman's concern:

There are a lot of states that are not focused, not interested and not doing anything as far as the industry's concerned...You could come out of prison at 10 in the morning and be working as a guard two hours later.

One of Hall's sources was more ominous. "Post-9/11 training is non-existent in certain parts of the country," according to Bruce Gelting, an official with Allied Security, the largest American-owned and operated private security outfit.

This thesis argues that a society which places its citizens, acting in the role as private security officers, on the front lines in the war on terrorism has a duty to train them with regard to the dangers they face and an obligation to ensure that they are properly screened for such employment. With the lead on protecting the homeland placed

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<sup>16</sup> Ibid.

<sup>17</sup> Mimi Hall, "Private Security Guards- Homeland Defense's Weak Link," *USA Today*, January 23, 2003, accessed via ProQuest September 27, 2003.

squarely on the shoulders of the Department of Homeland Security (DHS), it is incumbent upon DHS to undertake a campaign to require minimum training and licensing standards in every state.

The thesis is comprised of five chapters. This first chapter discusses the history of private security utilization. Additionally, the concepts of quiet enjoyment and an owner's obligation to his tenants are examined. Ultimately, New York State (NYS) law as applied to private citizens acting in the capacity of private security officers is examined.

Chapter II reviews the state of the private security industry as portrayed in the media both nationally and internationally. The calls for professionalizing the industry via training and licensing of individuals engaged in providing private security services are evaluated in conjunction with the various task force reports and the Hallcrest Reports analyses of the subject. The chapter also includes a discussion of the sole retrievable review of the individual requirements currently in place in each of the fifty states and the District of Columbia regarding licensing and training of security officers.

Chapter III is a case study of the cooperative effort between public and private security officials in the area around the former World Trade Center in lower Manhattan. Through a limited distribution questionnaire created for this project and posed to private security directors, the New York City Police Department official responsible for liaison to the private sector security industry and emergency management officials in New York City, it was determined that a good degree of cooperation exists. However, there is some resistance on the part of private security officials to disseminate fully the information obtained through these cooperative efforts to the security officers actually stationed at the access control points in these facilities. This thesis argues that a major factor for this reluctance is an incorrect assumption that one director summarized as "...they wouldn't know what to do with it."<sup>18</sup>

Chapter IV sets forth recommendations based on a review of the calls for change in the private security industry. The primary recommendation is the need for an updated

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<sup>18</sup> Interviews conducted for basis of chapter in March 2003.

study of the private security industry *à la* Hallcrest. The Department of Homeland Security would be an excellent champion for this review and a possible source of funding. The support of this incredibly important agency would prompt states to re-evaluate their policies toward this burgeoning segment of our efforts in the war on terrorism and result in, at minimum, basic standards for the training of security officer candidates as well as required background investigations.

Chapter V summarizes the findings and conclusions of the thesis.

Why does a society employ private security? If we define *personal* security we may better understand our employment of private security officers. According to Black's Law Dictionary, personal security is "A person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation."<sup>19</sup> Therefore, under the English Common Law and subsequent law in the United States, we understand an individual's right to 'quiet enjoyment.' Yet, as most readers would agree, often the first individual we see upon entering a premise other than a private home is a security officer. How did we become so reliant upon private security?

Traditionally, the police have been the mechanism for protecting the right to quiet enjoyment. Returning to Black's we find that police power is "An authority conferred by the American constitutional system...[to] secure generally the comfort, safety, morals, health, and prosperity of its citizens by preserving public order..."<sup>20</sup> Public order is usually the province of the police. So where do the private security officers enter the picture? As William Pelfrey indicates, quoting the case of Rodis v. Herman Kiefer Hospital, "the owner of property generally has a duty to protect tenants and invitees from unreasonable risks, including the risk of harm resulting from the foreseeable criminal activities of third parties."<sup>21</sup> What is generally accepted is that there is a right to quiet

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<sup>19</sup> Henry Campbell Black, *Black's Law Dictionary*, 5th ed. (St. Paul, MN.: West Publishing Co., 1979), 1217. The definition references Blackstone's commentaries on the Laws of England. In the same vein, NYS Security Guard training materials refer to the English Common Law. The NYS materials (3-3) also references federal, state and local statutes as the basis for security guard legal authority and specifically discuss all these elements re: arrest authority and the liability for failure to take action.

<sup>20</sup> *Ibid.*, 1041.

<sup>21</sup> William V. Pelfrey, "Convergence of Crime Prevention, New Policing Approaches, and Private Security: Crime Analysis," *Security Journal* 3, no. 4 (1992): 216.

enjoyment on the public avenues and a similar tenant's right or more importantly, *an owner's obligation*, to ensure quiet enjoyment in the private spaces. How does a property owner translate this theory into action?

Here is the rationale for utilizing private security officers as derived from the New York State Private Security Guard training curriculum.<sup>22</sup>

The security industry provides a general and specialized workforce to enforce the rules, regulations and procedures of employers and clients, control access and prevent trespass to an employer's or client's property, prevent loss of or damage to persons and property, represent the employer to authorized visitors and other employees, manage traffic flow and deter criminal activity on the employer's or client's property.

In essence, private security assures order in private spaces. It might be described as providing quiet enjoyment for the owner's tenants, or even *potential* tenants and invitees. William Pelfrey suggests that the presence of private security prevented crime and defused the effect of having 40 million invitees, and therefore potential victims, visit Las Vegas.<sup>23</sup>

The employer or client provides direction regarding the desired level of protection to the security officer. The security officer then performs his or her role in accordance with the New York State Private Security Guard curriculum that defines the officer's primary responsibility as protecting life and property from harm and maintaining order and control in the area assigned.<sup>24</sup> Later we will return to private security regulation in New York. For now, a review of the recent history of utilizing private security in the United States, other than just New York, is warranted.

Nationally, the call for law enforcement to examine other resources to assist them has been heard since the 1960s.<sup>25</sup> In the initial *Hallcrest Report*, authors William

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<sup>22</sup> New York State Division of Criminal Justice Services, Security Guard Program, *Eight Hour Pre-Assignment Course for Security Guards*. (Albany, NY: State of New York Executive Department, 1995), 1-2.

<sup>23</sup> William Pelfrey, "Tourism and Crime: A Preliminary Assessment of the Relationship of Crime to the Number of Visitors at Selected Sites," *International Journal of Comparative and Applied Criminal Justice*, Volume 22, 293-304 (1998).

<sup>24</sup> Ibid.

<sup>25</sup> Cunningham and Taylor, 3.

Cunningham and Todd Taylor discuss crime and protection resources in the report's introduction. Warren Burger, the Chief Justice of the Supreme Court is quoted as saying that police efforts had not resulted in safer streets but rather, a "reign of terror" existed in some cities.<sup>26</sup> Then Attorney General William French Smith opined that the United States was doing a better job in protection from outside threats than it did from those arising within the borders.<sup>27</sup> William J. Stuntz offers an excellent review of how police powers and the court restraint placed upon them ebb and flow with the level of crime in American society in his *Yale Law Review* article entitled, "Local Policing after the Terror."<sup>28</sup>

The *Hallcrest Report* continues on this theme of the police needing assistance in the "war on crime" by discussing the budget crunches of the 1970s, particularly California's Proposition 13, which resulted in a voter mandate to reduce government spending.

All but ignored or forgotten in the search for resource alternatives has been the over \$20 billion spent each year for private protection provided by a labor force of 1.1 million employees in the various facets of private security...**Private security resources have begun to play an increasing role in the protection of America.**<sup>29</sup>

It is critically important to highlight a major distinction between the era of the *Hallcrest Report* and today: in the late 70s and early 80s, police were resistant to private security services often due to the fear that more police might be laid off and lower paid private security would be brought on to perform the police officers' tasks. Earlier studies cited by Cunningham and Taylor<sup>30</sup> portrayed private security officers as "'underscreened, undertrained, undersupervised, and underpaid,' and in need of licensing and regulation to upgrade the quality of personnel and services."<sup>31</sup> When Cunningham and Taylor began

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid. Certainly, there is a case for the reverse being true today.

<sup>28</sup> William J. Stuntz, "Local Policing After the Terror," *Yale Law Review*, 111 (2002).

<sup>29</sup> Ibid. Emphasis added.

<sup>30</sup> James Kakalik and Sorrel Wildhorn, *Private Police in the United States* (commonly known as *The Rand Report*), (Washington, D.C.: Government Printing Office, 1971).

<sup>31</sup> Cunningham and Taylor, 4.

their research, they cited the major issues to be addressed. Two prominent conflicts were the friction between police and private security, or a mutual negative stereotyping as well as the lack of communication and cooperation between the two sectors. Today, many in New York would disagree that private security officers are currently utilized to replace police officers but would argue that lack of screening and training is still a major, unresolved issue.

Cunningham and Taylor discuss the “Private Security Advisory Council” (PSAC) and the “Private Security Task Force” (PSTF), entities whose reports were examined in researching this thesis. The PSAC was formed in 1972 as an advisory panel to the United States Department of Justice Law Enforcement Assistance Administration. The PSTF was created by the National Committee on Criminal Justice Standards and Goals. The PSTF noted, “There is virtually no aspect of society that is not in one way or another affected by private security.”<sup>32</sup> PSAC developed a Model Statute on which states might base their licensing and training of security officers in 1976;<sup>33</sup> the PSTF continued to emphasize that private security was a “massive,” underutilized resource.<sup>34</sup> Not much has changed in almost thirty years. While the police fear of being replaced by security officers has dissipated somewhat, the lack of training and the failure to mobilize this huge resource is still a national problem.

On a more operational level, how does a third party, like a private security officer, protect the public from harm? If as indicated above, a property owner has a duty to protect tenants and invitees, what happens when the owner is not physically present? Essentially, we need to examine the concepts of protecting and defending one’s self, protecting and defending third parties and protecting and defending property.

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<sup>32</sup> Ibid.

<sup>33</sup> Private Security Advisory Council, “A Report on the Regulation of the Private Security Guard Services, Including a Model Private Security Licensing and Regulatory Statute,” *U.S. Department of Justice Law Enforcement Assistance Administration*, May 1976.

<sup>34</sup> National Advisory Committee on Criminal Justice Standards and Goals, “Report of the Task Force on Private Security,” (Washington, D.C.: Government Printing Office, 1976).



Since the thesis will ultimately examine the efficacy of the New York State Security Guard Act's requiring private security to be certified and registered, an examination of New York State's Penal Law and its Criminal Procedure Law might provide illumination.

## **B. JUSTIFICATION AND THE AUTHORIZED USE OF PHYSICAL FORCE**

Under NYS Penal Law section 35.10.6, "A person may (*under circumstances more specifically set forth in the next section of the law*: ed. note) use physical force upon another person in defense of himself or a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent escape from custody."<sup>35</sup> What does this mean and how does it apply to private security?

There are three types of individual entities or 'persons' envisioned by this law: police officers, peace officers (individuals with police powers in limited locations, e.g., a correction officer in a jail, or a court officer in a courthouse) and private citizens. As one might imagine, the law gives enormous power to an ordinary citizen. For instance, if a private citizen *reasonably believes* another individual is, without permission or authority, taking or *about to take* his laptop, the owner may use physical force to prevent or terminate that attempt at larceny. No crime has to be committed. Merely a reasonable belief on the part of a person is the standard ultimately reviewed.

Where does this take us for purposes of private security? *Private security officers are viewed the same as private citizens*. Another provision of Article 35, specifically subsection 20, part 2 further delineates that use of force includes the use by a person "in possession or control of any premises..."<sup>36</sup> Here we have the concept of the owner placing another individual in his place as possessor or controller of the property. In NYS, the private person placed in the position of the owner may defend the property from attempts at burglary or damage to the premises *and there need not be an actual crime committed*. Therefore, in the example above, if the owner of the laptop is completely

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<sup>35</sup> New York State Penal Law, Justification, Authorized Use of Physical Force at [<http://caselaw.lp.findlaw.com/nycodes/c82/a12.html>]. Accessed March 25, 2004.

<sup>36</sup> Ibid.

unaware that his property has been removed without his permission or authority, yet the private security officer *reasonably believes* that a burglary (an actor has knowingly entered or remained unlawfully in a building with the intent to commit a crime therein) has occurred at the dwelling or occupied building he is in possession or control of, the security officer may legally use *deadly physical force* “when he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.”<sup>37</sup> Enormous power indeed!

In summary, society places ordinary citizens, the private security officer you said hello to this morning in the front lobby, in life or death situations with little or no formal training. Think about Mr. Okuku Bwaku on August 7, 1998 as he performed routine access control duties at the Nairobi embassy. We post private security officers at the New York Stock Exchange, Yankee Stadium, London’s Harrod’s department store and cafés in Israel. Some of these locations have been previously attacked, while others are clearly attractive potential targets for terrorists. We will not accept this lack of training with our police and we should not accept it regarding those who protect us in the public spaces and workplaces of America. While we may not require five months of training and the often-intensive background investigation we require of our police, a rudimentary understanding of the power invested in an individual called upon to wield same only makes sense, as does knowing what type of individual we have empowered.

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<sup>37</sup> Ibid., Section 35:20.3.

## II. THE STATE OF THE INDUSTRY

This chapter reviews the state of the private security industry as portrayed in the media both nationally and internationally. The calls for professionalizing the industry via training and licensing of individuals engaged in providing private security services are evaluated in conjunction with the various task force reports and the Hallcrest Reports analyses of the subject. The chapter also includes a discussion of the sole retrievable review of the individual requirements currently in place in each of the fifty states and the District of Columbia regarding licensing and training of security officers.

### A. THE CALL FOR PRIVATE SECURITY STANDARDS

This chapter reviews the state of the private security industry, reviewing the media reports on the industry as well as the scholarly reviews. Unfortunately, Cunningham and the authors of the two Hallcrest reports undertook the most comprehensive review of the industry and the *second* volume was completed in 1990. In researching this thesis, no new, thorough analysis of the private security industry *à la* Hallcrest was uncovered. The chapter examines the national debate regarding private security, both pre and post September 11, 2001 as well as some international reports on the industry since that fateful day.

#### 1. Nationally

As indicated previously, members of the United States press corps began an examination of the private security industry within weeks of the September 11, 2001 attacks. Jim Nesbitt's article entitled, *Private Security Firms Lack Standards and Oversight* was a very disconcerting report: 1.8 million people working in the industry, with no uniform standards, no governmental oversight and no uniform standards for training, education, psychological fitness, drug screening or criminal background checks.<sup>38</sup> Often the scene of abuses, ranging from "uniformed" criminals preying on those they have been hired to protect to "overzealous cop wannabes" who give the

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<sup>38</sup> Jim Nesbitt, "Private Security Firms Lack Standards and Oversight, Experts Say," *Newhouse News Service*, October 21, 2001, accessed via LexisNexis September 27, 2003.

security industry and police a black-eye when they exceed their authority,<sup>39</sup> security guards have been arrested for arson, embezzlement, armed robbery and murder according to Nesbitt. His final assessment; the key to success is training and proper screening of job candidates.<sup>40</sup>

Yet, in January 2003, fifteen months after the attacks, little had changed. Recalling author Mimi Hall: “Most of the nation’s 1 million-plus security guards are unlicensed, untrained and not subject to background checks.”<sup>41</sup> Also, as indicated earlier, Nesbitt and Hall are not alone in their concerns. Two industry experts were quoted by these authors as convinced that many states were uninterested in standards for private security officers. Additionally, the Hallcrest Report discussed the need for these state regulated requirements since its first analysis in 1985.<sup>42</sup>

## **2. Internationally**

On the international front, there are some nations which have examined the state of private security and the conclusion has been that training and background checks are a necessity. Consider the following:

- Canada- A Canadian Press article from August 2003 entitled *Growth of Private Security Worries Police Officers* stated “...there is no requirement for guards to be trained to any specific standard and there’s no public accountability.”<sup>43</sup>
- Israel- An Associated press article, also from August 2003, headlined *Israel’s Security Guards Face Agonizing Choices* indicates that “Israeli law requires large commercial premises to employ guards...[and] ...newspaper want ads...ask for a clean police record and some military experience...most are paid little more than minimum wage...”<sup>44</sup> Those ads and Israel itself do not require any special training or background check, although almost all candidates have prior military service.

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Mimi Hall, “Private Security Guards- Homeland Defense’s Weak Link,” *USA Today*, January 23, 2003, accessed via ProQuest, September 27, 2003.

<sup>42</sup> Hallcrest, Chapter 13, 219.

<sup>43</sup> Canadian Press, “Growth of Private Security Worries Police Officers,” *The Guardian*, August 29, 2003, accessed via LexisNexis, September 27, 2003.

<sup>44</sup> Associated Press, “Israel’s Security Guards Face Agonizing Choices,” *The Record*, August 14, 2003, accessed via LexisNexis, September 27, 2003.

- Australia- According to Janine O'Neill, a reporter for AAP Information Services, fears that lax industry standards might facilitate criminals and terrorists infiltrating private security caused the New South Wales State Police Minister to state it was "vital to upgrade eligibility standards following terror attacks in Bali and the US *and organized crime infiltration into some NSW security sectors.*"<sup>45</sup>

In a related article, Paul Wilson discusses the safeguarding of soft targets in light of the Bali nightclub massacre, and states that "...the evidence is increasingly clear that many security guards are poorly trained and often ignorant about basic crime prevention let alone elementary counter-terrorism techniques." Wilson goes on to discuss training, or the "Mickey-Mouse courses" and greater concerns about the backgrounds of those in the industry. "In its submission to the National Competition Policy Review the Queensland Police said they were aware of criminal interests infiltrating the security industry and using their role as security providers to plan criminal offences."<sup>46</sup>

The state of the industry, nationally and internationally, points to a need for uniform standards for training or certifying private security officers as well as registering or licensing them also. One of the most perplexing elements of the research for this thesis was the effort to initiate nationally directed standards for the private security industry and the recurring failure to effectuate the objective. An explanation of the Congressional failure to pass legislation known as the "Law Enforcement and Industrial Security Cooperation Act of 1996"<sup>47</sup> is needed. Further study could determine why the bill was re-introduced in 1997 as the "Private Security Officer Quality Assurance Act of 1997"<sup>48</sup> and once again failed to pass. Finally, the legislative history of including this

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<sup>45</sup> Janine O'Neill, "Government Tightens Security Industry Regulations," *AAP Newsfeed*, November 8, 2002, at [<http://web.lexis-nexis.com/universe>]. Accessed September 27, 2003. Emphasis added.

<sup>46</sup> Paul Wilson, "Security Industry Needs Urgent Overhaul," *Courier Mail*, October 21, 2002, accessed at LexisNexis, September 27, 2003.

<sup>47</sup> "Law Enforcement and Industrial Security Cooperation Act of 1996," *Lexsee Services*, at [[www.lexisnexus.com](http://www.lexisnexus.com)]. Accessed October 12, 2003.

<sup>48</sup> "Private Security Officer Quality Assurance Act of 1997," *Lexsee Services*, at [[www.lexisnexus.com](http://www.lexisnexus.com)]. Accessed October 12, 2003.

bill as a component of the “PATRIOT Act”<sup>49</sup> and the ultimate failure to have it included might shed light on why there are no national standards for private security officers.

Before we leave the topic, some relevant testimony from the hearings on the 1996 initiative in the House of Representatives is quoted below. While edited, Regis Becker’s entire testimony is relevant to today’s efforts to combat terror and virtually every time he describes the war against crime, we can substitute the word ‘terror’ for ‘crime.’

March 7, 1996

Mr. Chairman, my name is Regis Becker and I am president of the American Society for Industrial Security (ASIS).

...ASIS believes that considerable progress can be made in the war against crime if we in public law enforcement and private security work more closely together, rather than separately; if we work more intelligently, rather than more expensively. This, it seems to me, is what H.R. 2996 will foster. As the text of the bill recognizes, the private security industry is nearly three times the size of public sector law enforcement in personnel, and more than three times its size in budget. There are good reasons for this. An authoritative 1990 report entitled “Private Security Trends, 1970-2000”... The Hallcrest Study cited four reasons for the growth of private security:

- increasing crime in the workplace;
- increasing fear of crime;
- the decreasing rate of government spending for public protection; and
- increasing awareness and use of private security products and services as cost-effective protective measures.

***With such a large force of private security personnel across our nation, for us to look at crime control without considering an appropriate role for private security is to deny ourselves the use of a potentially effective weapon in the war against crime -- to fight the war with one hand tied behind our backs.***

The private security industry is not just the guard at the local shopping mall or the night watchman at a construction site. It is an industry with a wealth of experience and talent in its professional ranks... I can say on

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<sup>49</sup> “Provide Appropriate Tools Required to Interrupt and Obstruct Terrorism (PATRIOT) Act,” Congressional Information Services, Inc., at [[www.lexisnexis.com](http://www.lexisnexis.com)]. Accessed October 12, 2003.

behalf of the members of ASIS that, as an industry, we are prepared and willing to play a greater role in crime control...Our ability to prevent crime for our employers and clients will be enhanced by greater cooperation with the police. Similarly, we believe the ability of the police to fight crime will be enhanced by greater cooperation with security personnel of businesses and other community institutions. Let me make clear that we in private security have no desire to take the jobs or resources of public law enforcement agencies... More than anyone, we recognize that there simply is no substitute for a dedicated, well-trained, well-equipped police force ...

Public-private cooperation in crime control is a relatively new concept. Before the mid-1980s, private security and public law enforcement were described as mutually exclusive protective resources with relatively little interaction or cooperation between them. Fortunately, that situation has begun to change...Baltimore, Dallas, Detroit and New York also have been recognized as cities where significant progress has been made... But the fact is that progress has been sporadic and relationships are, even now, characterized as “fair to good, at best.” ***There is no cohesive, national strategy to encourage cooperation by recommending model procedures and removing laws and regulations which inhibit cooperation.*** Pockets of cooperation exist around the country, but they are the exception rather than the rule. The relationship between police agencies and their corporate counterparts tend more to reflect the personal relationships between the leaders of those groups than a rational consideration of real criminal threats and coordinated approaches to meet them. Thus, they vary from excellent to poor. Where they are excellent, the public benefits. Where they are poor, the public suffers. In its “Findings and Recommendations,” the Hallcrest Study identified several measures which would improve public-private cooperation.

- One was to upgrade the selection processes and training of private security personnel. We in ASIS are keenly aware of the importance of this issue. Those of us who have made our lives in law enforcement and corporate security cannot have the perception of our profession undermined by employees at lower levels in some organizations who are ill-selected and poorly trained.

...we are determined that this level of attention to selection and training be pushed down through the ranks of the private security field. Improved selection and training also will effectively provide a means of self-

licensing and self-regulation in which the police and public can have confidence, as well as reduce the high rate of turnover which has been characteristic of the industry at its lower levels.

- Just as private security must make every effort to build police and community confidence by continuing to improve the selection and training of its personnel, another recommendation was that police agencies increase their knowledge of private security... to develop a greater awareness by the police of the role and resources of private security in their communities. Yet another recommendation was the establishment of management and supervisory meetings and private security liaison officer positions in law enforcement agencies to increase dialogue, resolve problems and exchange information. In fact, information exchange and improved communications were the primary recommendations for more effective use of combined resources.

...Statutory and procedural impediments to public private cooperation should be identified and removed, and enhancements to cooperation encouraged. As the Hallcrest study states, "...the forging of cooperative crime and fear reduction ventures between the public and private sectors has begun -- albeit slowly. The number of partnerships and the diversity of programs undertaken is evidence of the desire and need for enhanced communication and cooperation between the law enforcement, private security and business communities." The desire and need are clearly established. What must be developed now is a mechanism for bringing these parties together to take a comprehensive, national approach to crime control--not in "fits and starts," but in a way that truly addresses the scope and seriousness of the problem. We in ASIS support H.R. 2996 because it not only would bring together law enforcement and private security, but also the nation's elected representatives.<sup>50</sup>

A full review of the 1996 and 1997 bills, in committee and otherwise, is beyond the scope of this thesis. Certainly, the legislative history warrants review by DHS if it undertakes a study of the regulation of the private security industry as suggested herein.

The next section examines New York State's comprehensive certification and registration regulations as well as the standards promulgated by other states.

Chapter III examines the New York State Security Guard Act model, its applicability to interaction with the public sector security forces and turns the focus

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<sup>50</sup> "Testimony March 07, 1996 Regis Becker President the American Society for Industrial Security House Judiciary Crime Pending Crime Bills," *Federal Document Clearing House Congressional Testimony, Federal Document Clearing House, Inc.* (1996) at [[www.lexisnexis.com](http://www.lexisnexis.com)]. Accessed October 12, 2003. Emphasis added.



toward nationally supported, state regulated applicability. First, a look at the most current survey of the training requirements of all fifty states this research was able to uncover.

## **B. STATE BY STATE STANDARDS**

The most recent and readily available resource on training requirements may be a survey conducted by the Service Employees International Union (SEIU) - a labor organization that represents some American security guards.<sup>51</sup> Released in July 2002, the SEIU survey gave failing grades to all but 17 states-and that assumes a “D” is a passing grade.<sup>52</sup> Each state was assigned a letter grade based on the training required, the type of background check conducted and the type of state oversight undertaken. California and North Dakota were the only states receiving an “A.” Also, only two states, Alaska and Florida, received letter grades of “B.” While not a scientific study conducted by an objective researcher,<sup>53</sup> the survey certainly gives an indicator of the state of the industry.

Surprisingly, New York received a “C.” It is surprising because New York has required pre-assignment, post-hire and refresher training since 1994, as well as conducting background checks and ensuring state oversight. Where New York dropped in the rating system was in its background checks: while it once required federal as well as state checks, it has been utilizing state checks only for several years. A federal check uncovers possible arrests of an applicant nationwide whereas a state check is only searching that state’s arrestee database. In all actuality, California received an “A” for

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<sup>51</sup> See also Hemmens, Craig, Maahs, Jeff, Scarborough, Kathryn E. and Collins, Pamela A., “Watching the Watchmen: State Regulation of Private Security 1982-1998,” *Security Journal*, Perpetuity Press Ltd. (2001). This study is certainly more scientific, but the data is less current than that in the SEIU survey, the review culminating with data from 1998.

<sup>52</sup> “Raising Security Standards: Security Report Card: Failing to Make the Grade,” at [\[http://www.seiu.org/building/security/statesecuritygrades.cfm\]](http://www.seiu.org/building/security/statesecuritygrades.cfm). Accessed January 16, 2004. The District of Columbia was also ranked for a total of 17 passes and 34 failures. See Appendices A and B for details on evaluating states and results.

<sup>53</sup> Note the error in the New York State rating calculation. Additionally, the website’s pop-up window gives NYS a “D” instead of the “C” listed in the compilation of state ratings, which is also incorrect. Nonetheless, a system of standards or metrics was developed and an attempt made to evaluate state mandated training programs. All the more reason a DHS study should be undertaken.

garnering 15 points out of a possible 18 and New York received 13 points. According to the rating system, New York should have received a “B” because the only difference between the two was New York no longer requiring the federal background check.

Both California and New York have undertaken what the SEIU has defined as excellent training and licensing regulations. Unfortunately, no industry standard has ever been agreed upon. Important to note is that enhancements to California’s law become effective July 2004 and New York is considering legislation that will reinstitute the federal fingerprint check. Since the author is a certified New York State Security Guard instructor, having 10 years experience in the industry, and spent 22 years in the New York City Police Department, the obvious choice for a case study was New York, both the New York State Security Guard Act and the relationship between the New York City Police Department and the private security industry in the City.

### **III. APPLICABILITY OF THE NEW YORK STATE SECURITY GUARD ACT TO HOMELAND SECURITY AND THE WAR ON TERRORISM**

We hear the calls for licensing and training, not only in the United States, but in other democracies as well. We see 33 states and the District of Columbia failing to garner passing grades for their efforts at overseeing their private security forces. Several appear to have no standards at all. Management of this constantly growing industry is certainly not optimal. Why should states require private security officers to be certified and registered? What benefits and costs are associated with regulating the activities of what is roughly estimated as more than a million and not quite 2 million<sup>54</sup> individuals performing private security duties?

Can the goals and objectives of licensing and training be articulated? What are the desired outcomes of requiring a private security officer to bear the costs associated with licensing and training? For example, the private sector desires these outcomes: reduced theft, increased employee safety and prompt response to and reporting on incidents that occur on the owner's premises, resulting in a higher bottom line (profit). The public sector hopes for earlier warning of terrorist activities, information gathering and another set of eyes and ears for the police, which result in increased public safety. Businesses are willing to pay for undertakings that enhance the bottom line, but not for initiatives that will not. Given that there are public safety benefits to employing private security officers, we have to figure out how to capture those benefits. One way is to subsidize firms to train and license the workforce; another way is to require them to do it. A third approach is to have the individual who wants to work in the private security field bear the costs of certification and registration himself. This chapter looks at these issues and makes the argument for the economic rationale for training and licensing. The New

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<sup>54</sup> Mimi Hall, "Private Security Guards- Homeland Defense's Weak Link," *USA Today*, January 23, 2003, accessed via ProQuest September 27, 2003. Also, Jim Nesbitt, "Private Security Firms Lack Standards and Oversight, Experts Say," *Newhouse News Service*, October 21, 2001, accessed via LexisNexis, September 27, 2003.

York State model whereby the candidate bears the costs of certification and registration dispels the government argument that it is too costly to undertake this process. It also presents a model that provides great benefit to the employer at little to no cost.

However, we might take the first look at a case study. The thesis examines information sharing with private security in Lower Manhattan and the relationship to the New York State law requiring private security officer certification and registration, ultimately demonstrating the value of private security in securing the homeland.

#### **A. A NEW VISION FOR PROTECTING THE PUBLIC**

A bold approach to public-private cooperation is strengthening counter-terrorism protection in New York City. On Wall Street, where what might be the most tempting terrorist target in the free world sits, innovative partnerships between the New York City Police Department (NYPD) and the security directors of private financial institutions have been enhanced. Originally founded for combating purse snatchings and street robberies, these partnerships have been renewed to combat terrorism. This unprecedented level of cooperation has revealed insights that may be applied not only to other counter-terrorism efforts in the region, but also more broadly to the challenges of protecting private sector critical infrastructure and public gathering places nationwide. Yet one question continues to linger-how does the country tap into the “army” of private security officers working in the United States.

Since September 11, 2001, New York City has been on high alert. Citizens are on edge and look to public servants for guidance and protection. In this small corner of the world, including that famous corner at Wall and Broad Streets, where stock certificate trades first occurred in the open air, there is fear; a permeable fear that this spot, if attacked again, would not only cause more death and destruction but could bring disaster to the American economy. Chief Executive Officers, bond traders, security directors and the personnel they manage are all seeking direction. The guidance they seek pertains to the substantive measures and programs to be implemented in order to reduce the level of anxiety and the potential for future attacks. The vast majority of that direction, in the form of information dissemination, is coming from one individual, the person appointed by the Mayor of New York with the responsibility for the safety of eight million New

York City residents and the other three million workers who enter the City each Monday through Friday between 9 AM and 5 PM. That individual is the New York City Police Department Commissioner.

In its scope, his direction has been unprecedented. The NYPD hired a Marine Lieutenant General to head its new Counter Terrorism Bureau and a veteran Central Intelligence Agency operations director to head a revamped Intelligence Division. New York has adopted the credo that it cannot and will not wait for the federal government to provide counter terror measures. The measures have been undertaken and they are modified as the immediacy and/or target of threats change.

#### **B. A COOPERATIVE EFFORT**

In order to gauge how private security was interacting with public security entities, a questionnaire was developed.<sup>55</sup> The questions sought to determine the level of cooperation between public and private security and whether or not private security believed public security officials were partnering with them. The hypothesis was that there was a lack of cooperation and coordination. The interviewees were public safety officials, emergency management officials and private security directors. Generally, the individuals responding to the questions regarding the cooperation between public and private security officials expressed satisfaction with the systems currently in place. Generally, they felt that electronic alerts issued by NYPD consistently kept them advised as to the status of counter-terror efforts in the City. The various ‘roundtables’ of security officials, both public and private, established in the last eighteen months and the State’s Office of Public Security *Advisory System*<sup>56</sup> also received high marks. While these measures may seem simplistic in nature, they prove that the ‘micro’ approach accomplishes what the ‘macro’ approach cannot. The reason is that the ‘micro’ solution,

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<sup>55</sup> A copy of the questionnaire is included as Appendix C.

<sup>56</sup> The Office of Public Security was established by Governor George Pataki in response to the mandate that all states have an entity to coordinate homeland security efforts. The state essentially adopted the federal color-coded terrorist warning system and developed a mechanism for disseminating warnings that has been lauded by its recipients.

the concise e-mail to a Blackberry pager, moves fast, does not intimidate the user and is easier to implement. Some real life examples of this process are discussed later in the chapter.

With the *National Strategy for Homeland Security* as a blueprint, this thesis keeps brushing up against a cornerstone of the *Strategy*: the coordination of public and private efforts aimed at preventing terrorism and protecting critical infrastructure. In an effort to refine the examination, the focus will be on the Lower Manhattan area of New York City, home to the financial institutions collectively known as “Wall Street.” Wall Street was selected for several reasons: because of its proximity to the September 11, 2001 attacks, its value to America as a symbol and economic force as well as the emphasis placed on enhanced security in the area with the rapid restoration of trading post-9/11. (The estimated losses from an inability to trade for four days have been put at in excess of \$800 billion. The reconstruction costs for the area around Ground Zero are still being calculated.) Further restricting the scope of the report will be the concentration on the coordination between NYPD (public sector) and private security, a mere sliver of the private sector in relation to the *National Strategy*’s assertion that 85% of critical infrastructure is in private hands. The area around “Ground Zero”<sup>57</sup> was examined as a case study utilizing interviews with prominent public and private security officials. Additionally, and possibly most importantly, a change in New York State law, codified under the General Business Law of the state and implemented prior to the World Trade Center attacks, has been evaluated for its applicability to addressing the new threats to homeland security.

### **C. THE NEW YORK STATE SECURITY GUARD ACT OF 1992**

Why should a state require its private security officers to receive training and be licensed? What benefit if any does the state derive from the requirements and what costs are associated with officer regulation? For instance, the *National Strategy for Homeland Security* states that “the responsibility of providing homeland security is shared between federal, state and local governments, *and the private sector*. In many cases, sufficient

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<sup>57</sup> The area of Lower Manhattan, in New York City, that surrounds the so-called footprint of the World Trade Center. No more than four city blocks away is the intersection of Wall Street and Broadway, the northwest corner of the present day New York Stock Exchange.

incentives exist in the private market to supply protection.”<sup>58</sup> What are these incentives to prod the private sector into providing protection? The next section addresses this topic, examining New York State’s mandatory certification and registration law for security officers and seeking some insight on the subject. Consider the following.

### **1. Legislative Intent**

The New York State Security Guard Act of 1992 became law on July 17, 1992 with the approval of then Governor Mario Cuomo. An excerpt from the text of the Act’s legislative intent is quoted as follows:

The legislature hereby finds that the provision of the contractual and proprietary security services is a rapidly growing industry in the state, particularly in metropolitan areas. Both private enterprise and government increasingly rely upon security services as a supplement to traditional law enforcement to protect people and property.<sup>59</sup>

Remember the time frame: this is prior to the first attack on the World Trade Center and before the African embassy bombings. The legislative intent continues:

The legislature finds that proper screening, hiring and training of security guards is a matter of state concern and compelling state interest to ensure that such security guards meet certain minimum recruitment and training standards as this industry and the demands placed upon it grows daily.

Therefore, the legislature hereby finds and declares that because of the need to regulate and license security guards, the state should establish uniform standards for the employment, registration, training, enforcement and liability insurance coverage of security guards and the security industry within the state. (General Business Law section 71.00)<sup>60</sup>

The state then specified that private security officers to be employed in New York must complete the following courses:

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<sup>58</sup> *National Strategy for Homeland Security*, emphasis added.

<sup>59</sup> New York State Division of Criminal Justice Services, Security Guard Program, *Eight Hour Pre-Assignment Course for Security Guards*. (Albany, NY: State of New York Executive Department, 1995), 1-2.

<sup>60</sup> *Ibid.*

- Eight Hour Pre-Assignment Training Course for Security Guards
- Sixteen Hour ‘On the Job’ Training Course for Security Guards
- Eight Hour Annual In-Service Course for Security Guards<sup>61</sup>

The state also requires extensive training for armed security guards (an initial 47 hours and an eight-hour annual refresher course). This thesis will restrict the discussion to unarmed security officers. Due to the myriad issues that arise with armed guards and the use of deadly physical force, these issues could not be sufficiently addressed here. Hallcrest addressed the issue and indicated that at least in 1985, there had been a decrease in the number of private security officers carrying firearms. The authors indicated that, “Nationally, less than 10% of contract security officers are armed and the policies of most companies discourage client requests for armed guards.”<sup>62</sup>

## **2. The Goals and Objectives of Requiring Certification**

The state’s rationale, or its goals and objectives, for requiring certification may be summarized as follows: it is a “matter of state concern and compelling state interest to ensure...guards meet...minimum training standards” because the demands on the security industry grow daily. Unmentioned is who bears the cost of becoming certified and licensed. While the state intentionally left the burden of economic compliance with the regulation in the hands of the private sector, because the private sector appears to be the prime beneficiary of the regulation, the state concern was primarily with protecting the public from abuse by private security officers entrusted with tremendous powers under the state’s Penal Law and Criminal Procedure Law. Therefore, there was a compelling state interest in the regulation of private security, but it was not in the realm of protecting critical infrastructure or even the public at large stadium like gatherings. Today’s war on terrorism might certainly challenge this view. Perhaps a review of some of the media reports following the attacks of September 11, 2001 will provide some focus on government’s need to train and regulate the private security industry.

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<sup>61</sup> See Appendix D.

<sup>62</sup> Hallcrest I, 103.



Returning to Mimi Hall, writing about private security officers in the January 23, 2003 edition of *USA Today*, we see that,

They are the first line of defense against terrorists. But more often than not, private security guards who protect millions of lives and billions of dollars in real estate offer a false sense of security. Most of the nation's 1 million-plus guards are unlicensed, untrained and not subject to background checks. Their burgeoning, \$12 billion dollar-a-year industry is marked by high turnover, low pay, few benefits, and scant oversight. And according to government officials and industry experts, little has changed since September 11, 2001.

One of the overriding goals of government in the nation's war on terror is to allay public fear. If Hall's assertions are correct, then one way for government to make that first line of defense an entity which offers real security would be to get behind the calls of security experts and law enforcement for mandatory training and licensing. One might even argue that this justifies government subsidies to train and license. An outcome-based analysis would dictate that in order to engender feeling secure in public, those responsible for detecting unusual activity or potential danger must be well trained. Additionally, the character of those personnel should be well known, i.e., subject to background investigations. Companies, at least those outside of New York and other states requiring registration, seem to be willing to hire security guards without knowing if they are criminals. It might be because they believe that the probability an individual is a criminal is low and the costs of finding out are high. Experience has shown this to be a risky gamble.

However, an input based analysis indicates that security is a business where contracts to provide protective services are awarded to the lowest bid. Consequently, security companies are loathe to accept new government mandates, such as training requirements, that serve to increase operating expenses. If mandatory, costs should increase for all. That is, it should not give any company a competitive advantage. It is more likely security companies resist because it will lower profits industry wide.

That is what makes New York's law so unique. The candidate is responsible for the costs of the pre-assignment course as well as obtaining fingerprints and forwarding

the prints and the application for a license. If companies were responsible for underwriting the training and licensing, their resistance would be understandable as a profit draining measure.

Yet some experts opine that if government does not demand greater standards, private security is an industry that will provide dangerous opportunities for terrorists.<sup>63</sup> For years, criminals have landed jobs as security officers in order to abuse their positions. What would stop a terrorist bent on destruction from following the same route to a sensitive location albeit for a “higher” purpose?<sup>64</sup>

#### **D. NEW YORK STATE LICENSING STATISTICS**

So how can we measure the efficacy of training and licensing regulations? With a ten-year history to review, New York State was the logical choice for case study. In an effort to determine the true benefit of requiring training and certification, the State of New York was contacted for statistical information regarding the effect of the mandates of the Security Guard Act of 1992. A summary of the response is offered below; unfortunately, statistical information apparently was not compiled for the period preceding the Act’s passage. Additionally, using some of Allen Schick’s writings on the topic of performance budgeting, and more specifically, outcome measurement,<sup>65</sup> it becomes obvious that training and licensing have tremendous value for the industry, the government and the public as a whole.

The research for this thesis included a request for data from the New York State Division of Licensing. The result of an e-mail request was the direction that in order to obtain the desired information, it was necessary to make the request under the State’s Freedom of Information Law (FOIL). The request was made in the prescribed fashion; unfortunately, the necessary data was not available. For instance, a request for the

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<sup>63</sup> Mimi Hall, “Private Security Guards- Homeland Defense’s Weak Link,” *USA Today*, January 23, 2003, accessed via ProQuest September 27, 2003.

<sup>64</sup> Interestingly, Timothy McVeigh applied for private security work in New York State prior to the enactment of training and registration requirements. The Timothy McVeigh Story: The Oklahoma Bomber at [[http://www.crimelibrary.com/serial\\_killers/notorious/mcveigh/terror\\_4.html?sect=1](http://www.crimelibrary.com/serial_killers/notorious/mcveigh/terror_4.html?sect=1)]. Accessed March 25, 2004.

<sup>65</sup> Allen Schick, “Does Budgeting Have a Future?” *Organization for Economic Cooperation and Development*, May 2001.

number of complaints lodged against security officers in the years 1992 and 1993, before the Act's passage, and the same data for the years 1994 and 1995, subsequent to the Act's passage, was unavailable. This was because no statistics were kept for the period prior to the Act and none were available for 1994 or 1995.

One statistic supplied was the number of registered security officers in New York State. As of February 17, 2004, there were 130,504 individuals holding private security officer licenses. If the writers quoted in earlier sections of the paper are correct, estimating the number of private security officers in the United States at between 1.2 and 1.8 million, New York State may be home to nearly ten per cent (10%) of the nation's private security force.

The State did not provide the number of complaints lodged against security officers in New York. It has tabulated the number of complaints lodged against 'Watch, Guard and Patrol Agency' licensees, the most common employer of private security officers and 'Private Investigators.' New York State has regulated the private security industry by means of licensing the 'Watch, Guard' providers for many years prior to the Security Guard Act requirements to regulate the officers themselves in 1992.

For the year 2002, there were 70 complaints against Watch, Guard and Patrol providers and 61 against Private Investigators. In 2003, there were only 19 complaints lodged against Watch, Guard providers and 80 against Private Investigators. While there is little to compare these numbers to, and there are no individual statistics on private security officer complaints, a reasonable inference may be drawn that with in excess of 130,000 officers, seventy complaints about Watch, Guard providers would indicate that there is not widespread dissatisfaction with the industry and its employees. Nineteen complaints might even be statistically insignificant.

With regard to rejection rates, or more specifically, how many candidates for licensing fail the background investigation, the State provided the following information. In calendar year 2003, the number of candidates for a private security license who were turned down by the State of New York totaled 9,358. Although requested, no other pertinent information was provided precluding any relevant comparisons. While the

rejection rate cannot be statistically assessed, the rejection rate of almost ten thousand applicants strongly suggests some level of scrutiny and evaluation of credentials and background. This reflects a governmental agency serious about licensing and credentialing.

Allen Schick has stated that in an effort to manage its finances properly, through budgeting and analysis of the funds expended, governments have struggled with the mechanisms necessary to define and measure outcomes. The numbers recited above might be explained by the following Schick analysis:

Outcomes usually lie beyond the direct control of the government department carrying out the program, and usually derive from a confluence of factors, not just policy intervention by the government. It is questionable whether a cause-effect relationship can be attributed to changes in policies and in social condition. Governments that seek to measure outcomes spend an inordinate amount of time arguing over whether a particular measure is an intermediate or end outcome, an output or an outcome, the difference between impacts and outcomes and so on. These sterile debates have impeded the application of useful measures by government. In my view, the most productive way to think about outcomes is as directional signals, not as causal statements. They should provoke government to assess whether social conditions are moving in the expected directions and whether policy changes should be considered.<sup>66</sup>

What that extensive quote is designed to illustrate is this principle: On first glance, security does not contribute to the bottom line. It does not make a profit like is made by selling a pair of Levis for \$40 when they cost \$12 to manufacture. Without a means for determining the value of thefts prevented, lawsuits avoided and catastrophes averted, it is difficult if not impossible to measure the benefit of requiring training and licensing. However, there are some inferences to be made, some 'directional signals' that requiring certification and registration is the expected direction that societal conditions ought to be moving towards. When many of the traditional tasks of the public security force have by necessity been undertaken by the private security personnel, there is a definitive need for quality assurance. This private policing in private places, such as building lobbies and their upper floors, corresponds to the President's *National Strategy*

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<sup>66</sup> Ibid.

whereby the private sector is incentivized to protect its critical infrastructure. Programmatic quality assurance begins with pre-assignment training and the mandate of a swift background investigation. Resistance on the part of ‘Watch, Guard’ providers concerned with shrinking profit margins is an unacceptable reason for failing to institute standards. It may seem out of context, but Schick has said “Citizens know their government through the services they receive from it.” The mandated training and licensing of private security officers is a clear-cut example of this statement. If not required by government, this ‘compelling state interest’ will succumb to special interest lobbying as it apparently has for most of the last ten years. The Department of Homeland Security has a compelling interest in studying the private security industry and taking the lead on requiring basic standards for all private security officers. After all, it is not the corporation footing the bill for the licensing and training. A candidate for security officer in New York pays thirty dollars to take the pre-assignment course, one hundred eleven dollars for the licensing process (\$75 to have the fingerprints checked and \$36 for the license application review) and then another sixty dollars for the sixteen hour on the job training course.<sup>67</sup> At least as far as New York security firms are concerned, it is not costing them a dime other than performing due diligence upon hiring a candidate, i.e. verifying whether the candidate is compliant with state law.

#### **E. THE CASE FOR REGISTRATION**

This section will delineate a number of reasons why registering security officers will benefit the country’s war on terror. Registration is another way of describing the process of conducting a background check on the security officer candidate before affording him a license to work. One of the results of the questionnaire posed to security directors was a reluctance to share information with their subordinates at the front door of the building. The reason was the lack of confidence the directors have in the security officers in understanding the sensitive nature of the information they have been entrusted with. This section will also attempt to dispel this anecdotal misconception about the capability and trustworthiness of private security, at least those with training and an

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<sup>67</sup> See Appendix D for requirements and costs.

understanding of why they become registered. Maybe most important to impart to the new security officer are the repercussions for violating the public trust imputed to him.

It seems apparent from the research gathered for this article that the consensus is pre-assignment training and background investigations are a necessity. Few jobs may be performed without a minimal amount of instruction beforehand and the private security officer's task is no exception. Eight hours of training is actually negligible when the magnitude of the duties performed by security is considered. In fact, the California training and licensing legislation that becomes effective July 2004 calls for thirty-two hours of pre-assignment training. On the job training and refresher courses, especially with a curriculum revised for terror attacks post September 11, will position the private security force as true first preventers.<sup>68</sup> These first preventers need to become a part of the nation's long-term strategy for dealing with terrorism. The attention being paid to counter-terror efforts has been waning. Only the Madrid attacks of March 11, 2004 seem to have reawakened the American public regarding our vulnerabilities.

Security officers establish and enforce the access control procedures at our facilities. A telling example of their dedication to duty is a recounting of private security officers' efforts to prevent the 1998 Kenya embassy bombing. Our Australian counterparts write of the desire to have security 'on our side' for fear of the officers signing up for duty to abuse their positions, a practice effectuated fairly often by routine criminals, and a practice society could not afford to allow to occur with terrorists.

Instilling a sense of pride in security officers regarding the essential duties they perform costs little. The benefits are hard to quantify.

However, more important to the first prevention efforts of the nation are the information sharing processes that disseminate pertinent information to those in the best position to observe abnormality first. DHS is already providing the private security industry with specific warnings contained in its bulletins. Clearly, DHS has a vested interest in ensuring the information is handled properly. Reinforcing the importance of the job and the information shared is a function of training. Reinforcing the officers'

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<sup>68</sup> See Appendix E.

Code of Ethics provisions on confidential information obtained on the job is a component of the annual refresher course in New York. Sharing across the public-private security continuum is essential. For this to happen, law enforcement officials and private security directors, very often former law enforcement officers themselves, must feel confident that those they share information with may be properly entrusted with that commodity. Hence, the importance of the background investigation.

### **1. Background Checks and the Relation to Information Sharing**

The Service Employees International Union (SEIU) survey<sup>69</sup> indicated that most states were not requiring their security officer candidates to undergo background investigations. The questionnaire for this paper indicated that security directors were uncomfortable divulging the information they had gleaned from NYPD counter terrorism alerts and one director scoffed at the idea of information sharing with the security officer at the front door of his facility. One of the drawbacks in New York has been the fingerprint check; currently, the prints are only run in the New York State criminal database. This means an individual may have no criminal record in New York and pass the background check even though he has a felony conviction as close by as New Jersey or Connecticut. New York State once required a federal fingerprint check, but the delays in processing led the state to abandon the requirement. However, there is pending legislation to reinstate the federal print check that would result in an SEIU rating of “A” for New York. Another significant problem is the employer who employs personnel who should be licensed and trained but who disregards the law. Consider the following abuse *which occurred with unlicensed private security officers in New York State facilities!*

Hundreds of Private Security Guards hired to protect state offices and landmarks did not meet basic qualifications -- and one was even caught drinking on the job by auditors from the state Comptroller's Office -- according to a report issued Wednesday.

The auditors found two guards who admitted failing drug tests and one who admitted stealing from a previous employer, in addition to the one

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<sup>69</sup> “Raising Security Standards: Security Report Card: Failing to Make the Grade,” at [<http://www.seiu.org/building/security/statesecuritygrades.cfm>]. Accessed January 16, 2004. The District of Columbia was also ranked for a total of 17 passes and 34 failures.

drinking at City College in New York. Three others provided false names to their employer -- and their true identities could not be determined, the report from Comptroller Alan Hevesi said.<sup>70</sup>

## **2. The Security Guard Act and Homeland Security Applicability-A Foundation for Information Sharing**

One of the largest hurdles to negotiate regarding Homeland Security has been information sharing. The debates over the need to know and who should have clearances as well as the utility of intelligence and whether it should be used with an eye toward prevention or prosecution continue. However, since New York is already requiring training and a background investigation, the foundation is there for entrusting security officers with sanitized information. The sensitivity of the security officer toward intelligence can be accomplished in two ways. For new candidates, the state mandated curriculum can be amended to include an understanding of this type information. The curriculum already includes an ethics component as well as a legal powers and liability segment. Revamping these areas would result in pre-employment training which could be reinforced and further developed in the sixteen hour 'on the job' course.

For those already employed, the state requirement of an annual eight-hour 'refresher' course, which has no mandatory curriculum, could be modified to include segments on sensitive information. Since the ethics and legal powers components are often the topics needing review, the inclusion of a new concept directly related to ethical handling of sensitive information will not be difficult to achieve. The fact is, with proper training and review of the ethics tenet that a security officer will "treat all information as confidential and privileged unless it violates the law or the code of ethics,"<sup>71</sup> information obtained from public security sources by private security directors could and should be disseminated. The costs are minimal, since the training is already mandatory-what is needed next is a 'tweaking' or sanitizing of the material and a decision by someone in authority to share that information with the officer in the field.

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<sup>70</sup> "State Hired Security Guards Aren't Qualified For Job," at [<http://www.1delta.net/>]. Accessed March 25, 2004.

<sup>71</sup> NYS Division of Criminal Justice Services Curriculum for eight hour pre-assignment course, Chapter 6, 8.



For states without mandatory training, the initial costs will be greater. The shift may very well have to be toward requiring security officer candidates to complete some basic educational material. However, and particularly in light of world events, there are probably very few governors who would be reluctant to tap a resource like private security and make them an essential component of a state's Homeland Security efforts, especially when the costs are not great and the process becomes revenue producing.

As public security officials, we would not dream of withholding information from our police officers about a gang of armed robbers sticking up leatherwear stores in the mall. No doubt, that information would be shared with mall security. We arm our security officers with relevant information regarding crime trends and patterns in an effort to broaden our public security deterrence and apprehension efforts.

In Israel, the security officer at the mall is tasked with identifying and stopping the individual attempting to engage in terrorist activity. He is also likely to be the victim of a homicide bomber he stops and questions. There is no denying the fact that a private security officer faces far greater danger from this type of individual than ever before. Even the underpaid security officers at the Nairobi embassy had more appropriate training than our security officers in America have received. It is unconscionable to not require that security personnel be trained and informed about the threats to the locations and people they are employed to protect. We have a duty in public security to keep private security informed. To quote Juliette Kayyem's article *Engaging the Private Sector*:

Public officials must take the lead in gathering, interpreting, and disseminating intelligence, in order to provide actionable guidance, that is, information regarding actions that the private sector might take...Government sharing of pertinent information may help the private sector to build its own responses more effectively, taking into account the costs and benefits of alternative plans of action.<sup>72</sup>

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<sup>72</sup> Juliette N. Kayyem and Patricia E. Chang, "Engaging the Private Sector," which was published in *Beyond the Beltway: Focusing on Hometown Security*, Harvard University John F. Kennedy School of Government, September 2002.

Terrorists are criminals: we need to treat them as such. The NYPD Counter Terrorism Bureau presents public information seminars where the speaker tells the audience that New Yorkers will defeat terrorism the same way they have driven down crime over the past decade-by refusing to tolerate it and by reporting unusual activity. A national strategy where government tells security directors that they will help defeat terrorism in the manner they defeated crime in their buildings, by empowering the guard at the door with relevant intelligence, and changing the law governing security guard training is a cost effective method of tapping an underutilized resource. As in New York, only those with a true desire to perform private security duties need apply-the costs of training and background checks are borne by the individual candidate. A state could not ask for a less costly method of regulation. Certainly, each state has an entity established to license nurses, attorneys and other professions. Moreover, every state has a criminal justice agency. These established departments will be utilized to do the fingerprint checks, the background evaluations and the curriculum review. The fees collected from the candidates are sure to support their efforts. New York rejected 9,358 candidates in 2003. It is unclear how many applicants were accepted, but at the new rate of \$111 per application, the rejections alone would have generated over one million dollars in fees.

**F. CONCLUSION: EMPOWERING THE OFFICER AT THE FRONT DOOR**

Distribution of information regarding stolen chemicals, be on the lookout for (BOLO) messages and/or photos of identified immigration law violators/suspected terrorists and pictures of missing radiological devices should be the tools of security officers. Security officers on patrol in lobbies and public spaces are much more likely to see the indicators of trouble as compared to their bosses. Disseminating this sanitized information to a security director toiling away in a tenth floor office defeats the purpose of sharing if it does not reach the officer at the front door. Surprisingly, as noted earlier, several security directors have scoffed at this idea.<sup>73</sup> Those directors have a problem of their own doing. They must ensure that their subordinates know the provisions of the

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<sup>73</sup> As revealed in the answers to the questionnaire.

New York State Security Guard curriculum's Code of Ethics and that they abide by the same. Anything less should result in immediate dismissal. An argument for equipping the front line of private security must be made.

The mechanisms exist, and are being studied, to improve upon the dissemination of intelligence from and to the private security sector. The questionnaire circulated for part of the foundation of this thesis hypothesized that the private security sector would report that there was a lack of coordination between the private security and public security sectors. As delineated earlier, this is not the case in lower Manhattan. Institutional relationships developed during periods of high crime, designed to combat street muggings, the same periods the scholarly studies referenced herein examined, resulted in initiatives that have been built upon and solidified as the United States undertook its war on terrorism. Timely dissemination of information was cited as the prime benefit of these cooperative efforts. High marks were accorded Michael Bloomberg, mayor of the City of New York, his Police Commissioner Ray Kelly, Kelly's deputies David Cohen and Frank Libutti and his Chief of Department Joseph Esposito. Highest praise was reserved for Lieutenant Jessica Corey who is the conduit of the 'sanitized' information disseminated to the private sector security directors, many of whom are former law enforcement officers. Several survey respondents indicated that effective counter terror efforts were the result of information forwarded by NYPD's *Area Police-Private Security Liaison Program* (APPL).<sup>74</sup> One of the interviewees was Lieutenant Corey, the NYPD lieutenant-liaison to the private security industry in NYC. Since September 11, 2001, she has noticed a reliance on NYPD APPL information, distributed by means of e-mail, on the part of private security directors. The directors often handle the daily onslaught of commercial tenant concerns<sup>75</sup> by relying on timely

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<sup>74</sup> APPL is an acronym for the "Area Police-Private Security Liaison Program." It was conceived in November 1985 when the PC met with four former NYPD chiefs who had become leaders in the private security community. The initial meeting of the PC and chiefs was called to discuss methods of increasing collaboration between public and private security. The short-term result was the Midtown APPL in Manhattan. Ultimately, 'APPLs' have been formed in many of the City's business areas, especially where there is a concentration of corporate or private security, particularly retired law enforcement members.

<sup>75</sup> Several terror alerts have discussed Al Qaeda's desire to attack so-called soft targets such as office buildings, apartment buildings and/or hotels. See the *BBC Online* at [[http://news.bbc.co.uk/1/hi/world/south\\_asia/2568825.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2568825.stm)]. Accessed March 25, 2004 and the *Sun Newspaper Online*, via [[www.thesun.co.uk/article/0,2-2003070291](http://www.thesun.co.uk/article/0,2-2003070291)]. Accessed February 12, 2003.

transmission of factual APPL information summaries. Friday, February 21, 2003, was a case in point. When a barge exploded at a refueling site on the southwestern shore of Staten Island, many local residents felt the concussion. Many Staten Islanders are employed in the Lower Manhattan financial district. As soon as those employees received telephone calls from frantic spouses or children who were home on the last day of schools' mid-winter recess, security directors all over the City needed information – and quickly. The APPL staff sent an e-mail that explained that responding fire, police and emergency management personnel were reporting that it did not appear to be a terrorist act, but rather a tragic accident. Several of the interviewees commented on the efficacy of the swift dissemination of the information regarding the barge explosion. It would appear that allaying fears is a major component of counter terror efforts, for if workers had begun to leave early to reach their homes, business would clearly suffer.

The phrase “That’s the way we always did it,” does not apply to APPL. Initially created to fight muggings and street crimes, under the guidance of the NYPD Chief of Department and Corey, the lieutenant-liaison, the APPL network has become the primary source of information from the public security sector to private sector security since September 11, 2001. The mechanism, adapted to today’s instant information capabilities via Blackberry and text messaging, offers private security real-time information on police events unfolding in NYC. In addition, APPL is not just e-mail. Each month the APPL personnel offer updates and prospective meeting information as well as a newsletter. One meeting in particular demonstrated the viability of this valuable resource.

As the World Economic Forum (WEF) and its attendant traveling circus of dissidents was about to descend on NYC in late January 2002, the ‘MidTown’ APPL sponsored a forum on expected street closures and frozen areas contemplated due to the potential protests. The program included the NYS Office of Public Security, the Patrol Borough Commanding Officer and the concerned precincts’ Commanding Officers. The room was standing room only with upwards of four hundred corporate security executives and managers. This meeting and subsequent forums sponsored by APPL are

the clearest example of public-private security initiatives in NYC. The New York model is working and is worthy of study. Modeling and benchmarking are critical processes for other jurisdictions seeking to maximize public- private initiatives and cooperation.

The revamping of APPL has proven to be well received by its constituents. Although the program is nearly twenty years old, it has proven its effectiveness and is deservedly seen as a best practice. Nevertheless, while the level of representation at these meetings is appropriate, a gnawing concern is to what level of the security division is the information trickling down. There is still work to be done.

The Office of Public Security alerts are an example. The APPL alerts are an even better example. As described by the questionnaire respondents, the information is timely, all efforts are taken to make it accurate and it is usually as complete as allowed by law. The challenge is putting it in the right hands. Former law enforcement officers, now employed as private security directors, have established a relatively formal, and a much greater *informal*, network for the flow of counter-terror related information. The roundtables established by former police executives in the lower Manhattan area are a prime example. These important assets in the war on terror, the retired law enforcement managers drawn to the private sector, need to buy into the idea that those security officers they now supervise are almost as critical in this unconventional war as the police officer in the street they once supervised.

If the issue is that they do not have confidence in their security officers, that misperception needs to be dispelled. These officers are entrusted with the ‘life safety’ of the employees at hundreds of locations in Lower Manhattan, as well as public spaces throughout the country. How can we afford to provide information on criminals involved in laptop computer thefts but neglect to provide similar information on a missing truckload of hydrogen cyanide? If the answer is that the officer at the front door would not know what to do with the information, then that is a training issue. Much like the Presidential approach using actual and psychological reconstruction of the public’s mindset regarding counter terror efforts, the private security industry can effectuate the same two-pronged change. By reconstructing the security officer’s training curriculum, we address the first prong and get the guards and their supervisors to invest in the training

necessary to ensure the officer at the front door is capable of meeting the challenges of combating terrorism. Once the officers are empowered, the public will become aware of the officers' new function and a psychological reconstruction will follow, with the public being expected to feel safer with the increase in anti-terror efforts.

This chapter has examined the New York State Security Guard Act of 1992, its requirements, how the private security-public security cooperation functions in Lower Manhattan and the steps necessary to optimize the information sharing that is critical to the American war on terrorism. The next chapter summarizes the thesis conclusions and recommendations for future action.

## IV. RECOMMENDATIONS

This chapter sets forth recommendations for incorporating the private security industry's efforts into the homeland security efforts of America. As has been discussed, there are cooperative efforts between the public and private sector in the security arena, yet those efforts have not been maximized. Using the New York State Security Guard Act of 1992 as a model for licensing and training of security officers and the information dissemination protocols which have been established in lower Manhattan as a model for information sharing, the thesis proposes that nationally supported, state regulation of minimum training and licensing standards will serve to improve the utility of a sorely undervalued asset in the war on terror.

A review of the Hall and Nesbitt media reports, a return to the PSAC and Hallcrest studies of the 1970's, 1980's and early 1990's, and more importantly, common sense, dictates that training for and licensing of our private security officers is, as the New York State legislature concluded, "...a matter of state concern and compelling state interest to ensure that such security guards meet certain minimum recruitment and training standards."<sup>76</sup>

Consider the January 23, 2003 shooting of a security officer on routine patrol at a chemical plant in the port city of Freeport, Texas. After questioning a man the officer deemed suspicious, the officer attempted to radio his dispatcher at which time the male shot him in the shoulder and fled the area. The area is home to BASF, one of the world's largest chemical manufacturers, and the complex includes an ammonia plant.<sup>77</sup> Most Americans are aware of the toxic effects of breathing household ammonia fumes, but how many are aware of the lethal effects to be unleashed by a terrorist attack on such a facility? We as a society entrust the safety and security of these facilities to men and

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<sup>76</sup> New York State Security Guard Curriculum.

<sup>77</sup> CNN, "Security Guard at Texas Chemical Plant Shot: Police Hunt Man Who Sped Away in Truck," at [<http://cnn.usnews.printhis.clickability.com/pt/cpt?action=cpt&title=CNN.com+-+Security>]. Accessed January 26, 2004.

women such as the officer who narrowly missed losing his life due to this incident. We have a responsibility to train these individuals about the hazards they face and the best practices for dealing with the new dangers they face daily.

The thesis makes five (5) specific recommendations. While there is no real priority ranking of the recommendations, it does seem imperative that support from an entity like the Department of Homeland Security would have an enormous impact on state cooperation in establishing minimum training and licensing standards for their private security personnel. Therefore, the first recommendation is to:

**A. PERSUADE DHS THAT THIS IS A TOPIC WORTHY OF STUDY *À LA* “HALLCREST”**

Although “Hallcrest” may have missed the mark on terrorism in the United States when it opined that,

While terrorist incidents have the potential of increasing at any time, no current evidence suggests that they will. It is conceivable to this observer that domestic terrorist attacks based on political or ideological motivation could increase, but these, too, are likely to remain infrequent,<sup>78</sup>

the value of the reports is in its methodology. The comprehensive study of private security can no longer be ignored. The citizens who choose to work in the private security field are our most likely defense against a terrorist attack that has unfolded due to proceeding undetected by the public sector security mechanism. This is not an attempt to disparage the seven hundred thousand plus law enforcement agents in this country but rather a fact in today’s communities. Think about it...on a daily basis, do we see more public law enforcement officers or private security officers. One does not enter too many public spaces these days without encountering a private security officer. The public safety sector just does not have the resources to be everywhere, all the time. It is the position of this thesis that the presence of trained security officers could make a positive difference at public locations such as department stores, ballparks and other large assemblages. As a society, we need individuals who embrace the two overarching concepts of the New York State

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<sup>78</sup> Hallcrest II, 96-97.



Security Guard curriculum-that a security officer *protect life and property from harm* and that a security officer be prepared to *detect, deter and report* on conditions that may cause harm. This leads to the second recommendation.

**B. PERSUADE DHS THAT NEW YORK IS A ‘MODEL’ TO STUDY**

The thesis sought to review metrics that would support the argument that training and licensing has a measurable, beneficial effect on the private security industry.

Unfortunately, the evidence was not available. As chapter three indicates, New York State was unable to provide the requested data to reach a conclusion. However, much like the “Hallcrest” reports, where one conclusion does not invalidate the extensive data collection and otherwise valid conclusions, the inability to quickly retrieve information does not invalidate all the data that has thus far been ‘unmined.’ The New York State requirements have been in place since January 1, 1994. There is a ten-year history to be explored on the value of mandatory certification and registration of private security personnel. The fact that there were less than one hundred complaints lodged against private investigators and Watch, Guard and Patrol Agencies in 2003 suggests that regulating the industry has resulted in satisfaction with the performance of the actors. There exists a need to undertake a new analysis of the security industry, a so-called *Hallcrest III*.

Undertaking a study of the New York experience with private security regulation has enormous value for the war on terror. Research could be directed at how to incentivize the private sector in supporting licensing and training efforts. Insurance costs should be examined as well as tax incentives for companies whose costs might increase with the mandate to certify and register their security officers. The economic impact of requiring the candidate to bear the costs of certification and registration, as is the case in New York State, needs careful evaluation. Does that requirement attract only motivated candidates? Does it preclude less privileged, but excellent candidates from entering the field? All these questions need to be answered, yet nothing in the literature seems to address these issues.

Not to be dismissed is the striking resemblance the New York State Security Guard Act has to the “Model Private Security Licensing and Regulatory Statute” developed by the Private Security Advisory Council to the United States Department of Justice Law Enforcement Assistance Administration in May 1976. Both require eight hours pre-assignment training. Both require registration with the state upon acceptance of private security officer employment, the ‘model’ requiring the candidate’s submission within fifteen (15) days and New York requiring submission within twenty-four (24) hours.

NYS requires an additional certification acquired by sixteen (16) hours of training within ninety days of accepting an assignment, the ‘model’ recommended thirty two (32) hours within one hundred twenty (120) days. Both require annual refresher courses of eight (8) hours. The idea is there is no need to reinvent the wheel. Since 1976, calls for professionalizing the industry have been made, but for the most part, unheeded. A 1984 article in *Security Management* commented on a 1980 survey conducted by the “Mayor’s Criminal Justice Coordinating Council for New Orleans.” In addition to echoing the same concerns of its predecessors (as well as unknowingly agreeing with articles that followed,) this article was uniquely interesting because New Orleans had surveyed the guards themselves. The findings:

In many cities throughout the country, the issue of security training, especially firearms training, is raised year after year with no results. Studies similar to the one described here can help legislators and city officials review current statistics on the problem in their locales. *Lawmakers need to become aware that security officers themselves recognize the deficiencies in their training and would welcome improvements.*<sup>79</sup>

As an active, authorized New York State private security officer instructor since the commencement of the program, the writer can confirm that this sentiment continues to permeate the industry in New York. The third recommendation follows.

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<sup>79</sup> See Milton Cox, “Guards on Guard Training,” *Security Management*, August 1984. Emphasis added.

**C. PUBLICIZE AND ENCOURAGE THE USE OF PROTOCOLS MODELED ON THE NEW YORK CITY POLICE DEPARTMENT AREA PUBLIC PRIVATE SECURITY LIAISON (APPL) AND THE NEW YORK STATE OFFICE OF PUBLIC SECURITY (OPS) ADVISORY SYSTEMS**

The questionnaire circulated for part of the foundation of this thesis hypothesized that the private security sector would report that there was a lack of coordination between the private security and public security sectors. As delineated in chapter three, this is not the case in lower Manhattan. Information sharing based on the APPL system that was established more than 20 years ago has served the private security community well. Nevertheless, there is a lingering drawback to the dissemination of sanitized intelligence to the private security industry. That leads to recommendation number four to:

**D. ENCOURAGE PRIVATE SECURITY DIRECTORS TO SHARE THE ‘INTEL’ THEY RECEIVE WITH SUBORDINATES**

One survey respondent indicated that he is unwilling to share the APPL advisories with his officers at the front door since he believes they would not know what to do with the information. While not a recurring belief, in a survey as limited as this it is cause for reflection.

If the issue is that private security directors do not have confidence in their security officers, then, as noted earlier, this attitude must be changed. Chapter III describes how these private security officers are entrusted with the ‘life safety’ of the employees at hundreds of locations in Lower Manhattan. Can we afford to provide information on criminals involved in petty thefts but neglect to provide similar information on a missing truckload of hydrogen cyanide? At the risk of being redundant, if a security director believes that the licensed, trained private security officer at her front door would not know what to do with the information, then that is a training issue. Only when the private security officers are trusted to receive and empowered to act upon ‘sensitive’ information, will the public become aware of the officers’ new function and a ‘psychological reconstruction’ will follow, with the public feeling safer with the increase in anti-terror efforts. This trust is aided by the background investigations which reveal whether or not an applicant is a suitable candidate for private security officer employment.

**E. ENCOURAGE A CALL FOR STATE LEGISLATIVE ACTION MANDATING SECURITY OFFICER TRAINING RE: THE USE OF SENSITIVE INFORMATION-SPEARHEADED BY THE AMERICAN SOCIETY FOR INDUSTRIAL SECURITY (ASIS)**

Professionalizing the security industry has been a cornerstone priority of the American Society for Industrial Security since at least 1986.<sup>80</sup> The former president, Regis Becker, testified before Congress that to combat increasing crime there was a need for greater cooperation between private security and the law enforcement community. He was aware that one of the impediments to this cooperation was the impression that private security officers were “ill-selected and poorly trained.” He committed the organization to the “Hallcrest” reports’ recommendations of training and registration, forging cooperative crime and fear reduction ventures and information exchange and communication improvements.

While New York State’s Security Guard curriculum has a segment on the ‘Code of Ethics’ and one of its tenets is that the security officer will protect information deemed confidential, unless it violates the law or the Code of Ethics, clearly there is a need to reinforce the importance of shared information.

As harsh as it may sound, it may be appropriate to make it a criminal offense to divulge information obtained in the official capacity as a private security officer. It is a measure employed in police departments and other law enforcement entities nationwide. Sometimes, in order to truly professionalize a segment of the workforce, discipline must be certain, swift and severe. A compromise might be the suspension and/or revocation of the offending officer’s license. Obviously, a progressively oriented system of discipline would be necessary. However, make no mistake: those entrusted with sensitive information would need to be made well aware of the repercussions of divulging that information before sharing becomes commonplace.

**F. CONCLUSION**

It is abundantly clear that private security plays a much different role in society than it did when the last major undertaking to study the industry was completed by

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<sup>80</sup> See Becker testimony before Congress cited herein.

Cunningham *et al.* in the Hallcrest Reports. The threat and reality of terrorist attacks mandates that these true first preventers have the requisite training to perform their vital function. At the same time, due to the enormous amount of power invested in these private citizens, the public has a right to know that a uniform standard of screening and background investigation is applicable to candidates in the field. In light of the need to share information about impending threats and actual attacks, it is especially important to know we can trust our private security forces. Therefore, a new study, a Hallcrest III for lack of a better descriptor, should be immediately undertaken. The study could commence with the unmined data from ten years of mandatory licensing and training of private security officers by New York State. Moreover, if information sharing is as imperative as we have all been told, an examination of the information sharing networks established between the NYPD and the private security directors in lower Manhattan lends itself to analysis and benchmarking worth.

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## APPENDIX A. FAILING TO MAKE THE GRADE

More than half the states do not require private security standards, such as security officer training and background checks.

<u>Security Grade</u>	<u>States</u>
A	California, North Dakota
B	Alaska, Florida
C	Oregon, Utah, Virginia, New York
D	Arizona, Arkansas, Illinois, Louisiana, Minnesota, North Carolina, Oklahoma, Tennessee, Texas
F	South Carolina, Georgia, Nevada, Vermont, Washington, Delaware, Maryland, Montana, New Mexico, Wisconsin, Connecticut, Indiana, Ohio, Hawaii, Iowa, New Hampshire, New Jersey, Pennsylvania, District of Columbia, Maine, Michigan, West Virginia, Massachusetts, Nebraska, Rhode Island, Kentucky, Alabama, Colorado, Idaho, Kansas, Mississippi, Missouri, South Dakota, Wyoming

Accessed on January 16, 2004 at

[[http://www.seiu.org/building/security/legislation/security\\_report\\_card/allstates\\_report.cfm](http://www.seiu.org/building/security/legislation/security_report_card/allstates_report.cfm)]

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## **APPENDIX B. HOW THE GRADING SYSTEM WORKS**

### **Determining a State's Letter Grade**

**A** = 15-16 points

**B** = 13-14 points

**C** = 11-12 points

**D** = 9-10 points

**F** = 8 points and below

**Each state was assigned a letter grade based on the following factors:**

#### **Training Required**

Pre-hire training of 8 hours or more: 3 points

Pre-hire training of less than 8 hours: 2 points

Post-hire training of 8 hours or more: 3 points

Post-hire training of less than 8 hours: 2 points

Refresher course required: 2 points

#### **Security Officer Background Checks**

Nationwide FBI background check: 2 points

State-specific background check: 1 point

#### **State Oversight**

Oversight governed by regulatory board: 2 points

Oversight governed by broad state agency: 1 point

State maintains registry of contract security officers: 1 point

State maintains registry of in-house security officers: 1 point

State requires security companies to apply for license: 1 point

State requires security officers to apply for license: 1 point

### **Report Card on Security Standards: Most States Are Failing**

Accessed on January 16, 2004 at

[[http://www.seiu.org/building/security/legislation/security\\_report\\_card/allstates\\_report.cfm](http://www.seiu.org/building/security/legislation/security_report_card/allstates_report.cfm)]

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## APPENDIX C. QUESTIONNAIRE REGARDING PUBLIC PRIVATE SECURITY COOPERATION

How effectively are private Counter Terrorism efforts being integrated into the overall public strategy?

How are these efforts being funded?

Does prioritization create any political and economic havoc?

What does the *National Strategy* envision but not explicitly state?

What are the tradeoffs between hardening targets, e.g., public access *versus* public inconvenience?

If the *National Strategy* calls for the private sector to pay for *everything*, what is the private sector willing to pay for?

What criteria are involved in the decision making process in determining who pays for what?

What stakes, i.e., economic, psychological and political, emerge if the New York Stock Exchange is attacked?

Assuming the NYSE is not subject to attack, what would be the impact of its decision to leave Wall Street?

How can this be prevented?

Can we implement non-traditional means of target hardening, e.g., information sharing with the private security sector?

If the theory is acceptable, how do we effectuate a program of two-way information flow?

More broadly, can we empower the security officer at the ‘front gate?’

Is this an appropriate method for securing the homeland?

**METHODOLOGY** The interviewees were all asked the same series of questions designed to elicit specific information regarding the City’s Counter Terrorism efforts. Wall Street was selected for ‘case study’ because it can be used to illuminate the larger issues involved in Critical Infrastructure Protection. The New York Stock Exchange offered not only an example of national critical infrastructure but a *symbol* of great

importance as well. This was clearly demonstrated by the urgency involved in restoration of operations on September 17, 2001. When decisions are made regarding protection of certain assets, it is not sufficient to suggest that relocation is the answer, otherwise the 'bad guys' win without firing a shot.

Since all but one interviewees demanded anonymity, there will be no private sector individuals' names or companies discussed. Those interviewed well represent the private security components of the financial district. A debt of gratitude is owed to all for taking time from hectic schedules in order to be electronically queried, personally interviewed and sometimes re-interviewed for clarification. Their cooperation has permitted the discovery and discussion of what may rightfully be called the 'ground truth' on the topic of "public-private cooperation in the financial sector."

***SUMMARY OF FINDINGS*** Nine of the ten individuals responding to the questions posed regarding the cooperation between public and private security officials expressed satisfaction with the systems currently in place. The nine felt that electronic alerts issued by NYPD consistently kept them advised as to the status of counter-terror efforts in the City. The various 'roundtables' established in the last eighteen months and the State's Office of Public Security Advisory System also received high marks. While these measures may seem simplistic in nature, they prove that the 'micro' approach accomplishes what the 'macro' approach cannot. The reason is that the micro solution, the concise e-mail to a Blackberry pager, moves fast, does not intimidate the user and is easier to implement.

## **APPENDIX D. NEW YORK STATE SECURITY GUARD REQUIREMENTS UNDER GBL 89-N**

All training is done under the auspices of state licensed private instructors and schools. There are no student fees paid to the state for certification.

<b>CERTIFICATION</b>	Certificate issued	Mandatory	Testing required	Timing
8 hour	Yes	Yes	Yes	Pre-employment
16 hour	Yes	Yes	Yes	Within 90 days of employment
8 hour	Yes	Yes	No	Annually

Eight hour ‘pre-assignment’ and 16 hour ‘on-the-job’ certificates are valid so long as they may be produced by student. Material is set by state and has not been modified since law being enacted. Eight hour ‘annual’ is repeated each year with new curriculum as developed by school and approved by state.

<b>REGISTRATION</b>	Fee required	Mandatory		Timing
Application	\$36	Yes		Within 24 hours of employment
Background check (including fingerprinting)	\$75	Yes		Within 24 hours of employment

Applications are completed by applicant and submitted to NYS Division of Criminal Justice Services (DCJS). Application handled by NYS Secretary of State, background check by DCJS. Fingerprints may only be taken by individuals approved by DCJS (for a fee).

A student having completed the eight hour pre-assignment course may take a job as a security officer. He is expected to get licensed within twenty-four hours of becoming employed, virtually impossible. The state, recognizing this, permits the registrant or ‘security guard license’ applicant to maintain compliance with the law by submitting a license application and background check package, including prints ‘rolled’ by an authorized individual, within 24 hours of taking a job. Mail must be submitted certified and return receipt requested in order that the registrant is able to prove he has submitted.

In addition to being compelled to become licensed, a new security officer must complete the sixteen hour course within ninety days of becoming employed. Tuition for the eight hour course is approximately \$30 and the ‘on the job’ training is about \$60. It is a relatively expensive proposition for someone entering the field.

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## APPENDIX E. RECOMMENDATIONS FOR JOB TRAINING AND REFRESHER COURSES

<b>Training</b>	
<b>NYS REQUIREMENTS</b>	<b>SUGGESTED REQUIREMENTS</b>
8 Hours Pre-Assignment Training	16 Hours Pre-Assignment Training
16 Hours ‘On The Job’ Training	16 Hours ‘On The Job’ Training
8 Hours Annual Refresher Course	16 Hours Annual Refresher (2 Eight Hour modules semi-annually)
Extended (highlighted) training sessions would allow for Counter Terror instruction	
<b>Licensing</b>	
State Fingerprint Card	State Fingerprint Card
Law to change & require FBI fingerprint card	FBI Fingerprint Card
Last five years activity in background investigation	Last Ten Years Activity in Background Investigation

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